HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9977 of 2015

ORDER :

The petitioners are the Management of Orient Cement, Devapur, Adilabad District, represented by its Deputy General Manager (IR & HR) Mr. V.Manbaliah and the Assistant General Manager (Personnel) represented by Mr.Bhola Sharma, are accused Nos.1 and 2 respectively in S.T.C.No.1 of 2015 pending on the file of the Judicial Magistrate of First Class, Godavarikhani. It is for the offences punishable under Sections 468 and 472 of Cr.P.C. read with Section 29 of the Industrial Disputes Act, 1947 (for short, 'the Act'), for breach of the award passed by the Industrial Tribunal under Section 29 of the Act by the petitioners herein. It is based on the private complaint and the learned Magistrate has taken cognizance for the said offences against the petitioners/accused Nos.1 and 2, the same is seeking for quashment herein.

2. The brief facts of the de facto complainant-Janardhan Kumar Joshi, who is the 2nd respondent herein are that he has been working under the accused company in the Accounts Department and by order, dated 08.11.1997, the accused company illegally reverted him to Grade-IV from Grade-V by foisting vague and false charges, as such, he referred a dispute before the Industrial Tribunal-cum-Labour Court, Godavarikhani, in I.D.No.59 of 1999 and the Industrial Tribunal passed award, dated 19.12.2000, in his favour and the same was also published on 31.03.2011 vide G.O.Rt.No.430, dated

22.02.2011. Though the de facto complainant made several applications to the accused company requesting to implement the award besides issued legal notices, there is no response from the accused company. As the accused company willfully not implementing the award of the Tribunal, there is difference of salary from the date of his reversion i.e., on 08.11.1997 till the date of filing of this criminal petition is to a tune of Rs.27,00,000/-. The de facto complainant further stated that he filed E.P.No.9 of 2014 before the Industrial Tribunal seeking attachment of schedule properties and it is pending.

3. Heard both sides.

4. The contentions in the quash petition are that the de facto complainant has not attended the duties since 01.12.1997 and the accused company paid an amount of Rs.1,052/- towards difference of pay for the period from 10.11.1997 to 31.11.1997 by way of demand draft bearing No.266996, dated 29.06.2009 and the same was returned by the de facto complainant as 'not acceptable hence returned' and even the accused company has informed him to join the employment, he has not turned up to join the duty and that on 08.08.2005, the de facto complainant addressed a letter to the Executive Vice Prsident of accused company agreeing to join his duties and it is further contended that in response to the letter, dated 08.11.1997, the de facto complainant is withdrawing all the representations and complaints including all his claims made against the accused company and later

did not turn up. Since the de facto complainant was not joining the duty, the accused company addressed letters dated 22.10.2012 and 19.11.2012 to vacate the quarters and on that the de facto complainant issued legal notice, dated 30.01.2013, and the accused company cause issued reply notice, dated 08.02.2013, refuted all claims. The de facto complainant made letters and legal notice through advocate, in all times it was informed that to join duties at the earliest, but he did not turn up. It is further contended that the de facto complainant neither joined in duty nor vacated the quarters allotted to him and that he filed E.P.No.9 of 2014 in I.D.No.59 of 1999 after lapse of 14 years, which is not maintainable and that the cognizance taken by the learned Magistrate is illegal and untenable and Section 34(1) of the Act provides that no Court shall take cognizance of any offence punishable under this Act and the present complaint under Section 29 of the Act against the accused company is untenable and abuse of process of law and there was no cause of action arose for filing the present complaint. It is further contended that the accused company implemented the award by informing the de facto complainant to report to duty, vide letter, dated 28.06.2011, and also paid the difference pay and costs of the award and the present complaint is also in contravention of Section 32 of the Act and also the complaint itself is barred by limitation. It is contended that as per Section 468 Cr.P.C., no Court shall take cognizance of an offence after expiry of the period of limitation and the punishment prescribed under Section

468(2) Cr.P.C. is less than one year, therefore, the period of limitation for filing the complaint is one year. It is further contended that the de facto complainant filed the complaint with a malafide intention and ulterior motive and made the accused company to come to terms.

5. Sections 468 of 473 Cr.P.C of Chapter 36 for the purpose of answering the issue from hearing of both sides read as follows:

> S.468: Bar to taking cognizance after lapse of the period of limitation.
> (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.
> (2) The period of limitation shall be-
> (a) six months, if the offence is punishable with fine only
> 1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
> (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
> (3) [1] For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]
> 469. Commencement of the period of limitation.
> (1) The period of limitation, in relation to an offender, shall commence,-
> (a) on the date of the offence; or
> (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
> (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to

the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

1. Ins. by Act 45 of 1978, s. 33 (w. e. f. 12- 12- 1978).

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

471. Exclusion of date on which Court is closed. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court

reopens. Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.
472. Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.
473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

6. The period of limitation defined in Section 467 Cr.P.C is the period specified for taking cognizance. The law is fairly settled that it is the date of filing of the complaint criteria irrespective of any delay in taking cognizance, Section 468 IPC speaks from the above that the Court cannot take cognizance all the offences after expiry of six months, if the offence is punishable with fine only; one year, if the offence is punishable with imprisonment for a term not exceeding one year; three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469 Cr.P.C. supra speaks the commencement of the period of limitation is from the date of offence or where the commission of the offence was not known to the person aggrieved or to any police officer, the first day on which such offence comes to the knowledge.

7. However, so far as a continuing offence concerned from Section 472 Cr.P.C supra, a fresh period of limitation shall begin to run at every moment of time during which the offence continues. The

very complaint also extracted at para 4 Section 29 supra and at para 5 it referred the expression of the Apex Court in 1999 (3) LLJ (Supp) 1069 and another expression of 1987 (II) LLJ 38 of the offence in question is a continuing one. Here, the non-implementation of the award in question is a continuing offence, thereby the general period of limitation to say the clam is barred by limitation of one year for the offence punishable prescribed under Section 29 of the Act is up to one year, is not tenable.

8. Coming to the rival contentions on the application of Section 29 of the Act under impugnment concerned, which reads any person who commits a breach of any term of any settlement or award, which is binding on him under the Act, shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both (and where breach is a continuing one, with a further fine which extent to two hundred rupees for every day during which the breach continues after the conviction for the first) and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

9. Both counsel placed reliance on the expression of the Apex Court Three Judge’s Bench judgment in **Raj Kumar Gupta v. LT.Governor, Delhi and others**[1]**,** where Section 34(1) of the Act came for consideration and it is stated that complaint has to be filed

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[1] (1997) 1 SCC 556

by the appropriate Government or its functionaries but the appropriate Government could authorize any private party to file the compliant. Where Section 39 of the Act also referred in saying ‘under the authority of the appropriate Government’, how to construe from combined reading of Section 34 (1) with Section 39 of the Act. It is observed that there is no limitation in Section 34 (1) of the Act with regard to the party to whom the authorization to file a compliant may be given. It is the workman, the trade union and the employer which are most concerned with offences under the Act and neither the terms of Section 34 nor public policy require that they should be excluded from making such complaints at the same time the provisions of Section 34 are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the said Act. They should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints and to this end Section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorization of the appropriate Government.

10. Having regard to the above and from the perusal of the complaint filed by the employee, there is nothing to show there is any authorization as contemplated by Section 34 (1) of the Act and the expression of the Apex Court in Raj Kumar Gupta supra, which is the pre-requisite and cause entitled to take such offence as also observed therein, the proceedings are liable to be quashed. However, it is not a

bar to file fresh complaint after obtaining authorization for the offence is a continuing one.

11. Having regard to the above and from cognizance of the learned Judicial Magistrate of First Class at Godavarikhani, in taking the case on file in S.T.C. is not with pre-requisite authorization, the criminal petition is allowed quashing the proceedings against the petitioners/accused in S.T.C.No.1 of 2017 on the file of the Judicial First Class Magistrate, Godavarikhani, with liberty to the petitioner to file fresh complaint if there is authorization for the offence is a continuing one.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

22nd November 2017.

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